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Paper No. 4

KLAUBER & JACKSON
411 HACKENSACK AVENUE
HACKENSACK, NJ 07601

In re Application of
James E. Darnell, Jr. et al.
Serial No. 08/212,185
Filed: March 11, 1994
Atty Docket No. 600-1-073 CIP

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: DECISION ON PETITION
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This is a decision on the petition filed May 31, 1994, requesting that the above-identified application be accorded a filing date of March 11, 1994.

On March 11, 1993, the application was filed without an executed oath or declaration.

On April 20, 1994, Application Division mailed a Notice stating that a drawing of Figure 13D described in the specification was required in compliance with 35 USC 111 and that the filing date of the application would be the date of receipt of the omitted drawing. An oath or declaration in compliance with 37 CFR 1.63 and additional filing fees of \$3682.00 were also required.

In response, on May 31, 1994, the present petition, including the petition fee, an authorization to charge any additional fees to counsel's deposit account, and a preliminary amendment canceling the reference to Figure 13D in the brief description of the drawings, and substituting a reference to Figures 13 (B-C), was filed. The preliminary amendment also corrects references to Figures 12, 14 and 15 in the specification. Petitioners request that the application be accorded a filing date of March 11, 1994.

MPEP 608.01(f) states, in part, that an application is considered incomplete if it omits drawings which are described in the specification.

Upon review of the file, it appears that applicants erroneously referred to Figure 13D in the brief description of the drawings when, in fact, the drawings contained no figure labeled "Figure 13D". Instead, the drawings contained figures labeled Figures 13A, 13B, and 13C.

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The argument made in the petition is convincing that the reference to "Figure 13D" in the specification was an inadvertent error which has now been corrected by the preliminary amendment filed with the petition.

The petition is granted.

However, since the application as filed included a reference to Figure 13D, the application was prima facie incomplete without that figure and Application Division's handling of the application was correct. Thus, a petition and the petition fee were required to correct applicants' error.

A review of the record reveals that the application still does not include an oath or declaration in compliance with 37 CFR 1.63. Therefore, an oath or declaration in compliance with 37 CFR 1.63, identifying the specification to which it is directed (preferably by reference to the above-identified Serial Number and filing date) is required. The surcharge under 37 CFR 1.16(e) is also required.

Applicants are given ONE MONTH from the date of this decision to file the oath or declaration and the surcharge required above in order to avoid abandonment of the application. This time period may be extended pursuant to 37 CFR 1.136(a). The response should be directed to the attention of Application Division.

The preliminary amendment to the specification filed May 31, 1994 will be entered in due course and must be considered by the examiner for entry of new matter not described in the application as filed. 35 USC 112, first paragraph; 35 USC 132.

A further review of the record reveals that the basic filing fee of \$710.00, a multiple dependent claim fee of \$230.00, and additional claims fees of \$2764.00 has not yet been submitted. These outstanding fees, as well as the \$130.00 surcharge under 37 CFR 1.16(e), for a total of \$3834.00, will be charged to counsel's deposit account in accordance with the general authorization in the petition of May 31, 1994 to charge any additional fees to counsel's deposit account.

The application is being forwarded to the Office of Finance for charging the outstanding fees due of \$3834.00 to counsel's deposit account No. 11-1153.

Thereafter, the application will be returned to Application Division for further processing with a filing date of

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March 11, 1994, using the application papers deposited on March 11, 1994 and the declaration filed thereafter, and an indication on the file wrapper that forty-two (42) sheets of drawings were present on filing.

Fred A. Silverberg

Fred A. Silverberg
Special Program Examiner
Office of Special Programs
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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